S.B.CRIMINAL REVISION PETITION NO.921/2007
(M/s Rakesh Trading Com. Vs. State & Ors.)

Date of order : 30.8.2007

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. M.K. Garg, for the petitioner.
Mrs. Vidhyawati Boda, Public Prosecutor.

Heard learned counsel for the petitioner.

In this revision petition, the petitioner has challenged the order dated 24.7.2007 passed by Addl. Sessions Judge, No.1. Hanumangarh whereby while partly allowing the appeal filed by respondent No.2 – Salag Ram, the application filed by respondent No.2 under Sections 391 & 311 Cr.P.C. was allowed and the judgment dated 12.5.2004 passed by Judicial Magistrate Ist Class, Piliganga was set aside and the case was remitted to the trial Court with the direction for bringing additional evidence on record.

Learned counsel for the petitioner contended that the order passed by learned lower appellate Court is erroneous because according to the facts of the case, an opportunity was given to the non-petitioner by the trial Court for adducing evidence and if he has failed to adduce evidence, there is no question for exercising power under Sections 391 and 311 Cr.P.C. by the appellate Court.

The legislature has purposely provided under Section 391 Cr.P.C. that at the time of dealing with an appeal, the appellate Court, if thinks proper to take additional evidence which is necessary for adjudication, it may after recording its reasons either take such evidence itself or to direct the trial Court while remitting the case. It is further provided under Section 391 Cr.P.C. that when the additional evidence is taken by the Court of Sessions or the Magistrate, it or he shall certify such evidence to the appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

In my opinion, the learned lower appellate Court has rightly exercised its discretion on the facts and circumstances of the case. I find no illegality or perversity in the impugned order, which requires any interference by this Court in its revisional jurisdiction. Accordingly, the revision petition is dismissed.

(GOPAL KRISHAN VYAS), J .

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